



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

**MEMORANDUM**

**TO:** Potential Cigarette Manufacturers or Importers

**FROM:** Division of Advertising Practices,  
Federal Trade Commission

**DATE:** August 17, 2004

The requirements for health warnings on cigarettes is governed by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331, et seq. ("the Cigarette Act"). [A hyperlink to the Cigarette Act can be found on the Federal Trade Commission's Web site, <http://www.ftc.gov/bcp/menu-tobac.htm>]. We direct your attention, in particular, to Section 1333 of the Cigarette Act which imposes labeling and advertising requirements on the manufacturers, packagers, and importers of cigarettes and requires any company wishing to sell cigarettes within the United States to submit a plan to the Federal Trade Commission explaining how it will comply with the health warning display requirements.<sup>1</sup>

Section 1333(a) sets forth the precise wording, capitalization, and punctuation of the warnings required for all packaging and advertising of cigarettes sold, distributed, or advertised in the United States. Section 1333(b)(1) provides the placement and size requirements for the warnings on cigarette packaging. Section 1333(b)(2) sets forth the requirements for warnings in advertisements, except for outdoor billboards, which are covered in Section 1333(b)(3).

Section 1333(c)(1) requires that the warnings rotate quarterly in both advertising and packaging in accordance with a plan submitted to and approved by the Federal Trade Commission. Section 1333(c)(2) provides an alternative to quarterly rotation of warnings on packaging for companies with a low enough sales volume. It allows a cigarette manufacturer or importer to apply to the Federal Trade Commission for permission to display the four warnings

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<sup>1</sup> You should also be aware that Section 1335a of the Cigarette Act requires that cigarette manufacturers and importers annually file with the Secretary of the Department of Health and Human Services ("HHS") a list of the ingredients added to tobacco in the manufacture of their cigarettes. Furthermore, the Tariff Act of 1930, 19 U.S.C. § 1681a(c)(1), as amended by the Tariff Suspension and Trade Act of 2000, Pub. L. No. 106-476, 114 Stat. 2179, prohibits the importation of cigarettes unless at the time of entry the importer presents a sworn statement signed by the original cigarette manufacturer stating that the manufacturer has submitted and will continue to submit the list of ingredients to HHS.

an equal number of times during the year on a brand style's packaging if the company's annual sales of that brand style are less than one-fourth of one percent of all of the cigarettes sold in the United States and more than half the cigarettes manufactured or imported by that company are packaged into brand styles that meet this low sales threshold. There are no exceptions, however, to the quarterly rotation requirement for advertising.

As mentioned above, any company wishing to sell or advertise cigarettes within the United States -- regardless of the volume of its sales -- must submit a plan to the Federal Trade Commission explaining how it will comply with the warning label display requirements.<sup>2</sup> The plan should be in the form of a letter addressed to: Ms. Mary K. Engle, Associate Director, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (Submissions sent via Federal Express or other courier services should be addressed to: 601 New Jersey Avenue, NW, Washington, DC 20001.) The plan should include the following elements:

#### I. Packaging

A.) Warning Label Size and Location: A plan should identify the brands and brand styles of cigarettes that the company manufactures and imports. The company should, for each brand style it manufactures or imports, submit four packages displaying examples of each of the four warning statements it will use. If cigarettes will be sold by the carton, four cartons with each of the four warning statements must also be submitted for each brand style -- in addition to the samples of the packages. The warnings must be of appropriate size, conspicuousness, and contrast. As of December 9, 2000, it is illegal to import cigarettes unless the precise warning statements are permanently imprinted both on cigarette packs and cartons.<sup>3</sup>

B.) Warning Label Rotation: If the company wishes to rotate the warnings quarterly on packaging, it must provide a schedule showing the warning that is assigned to each brand during each quarter of the year. See the Sample Schedule for Quarterly Rotation, attached below. The company should also specify the date on which the quarterly rotation will be based, e.g., the date on which the cigarettes are packaged.

If the company wishes to use the option provided by Section 1333(c)(2) instead, and display the four warnings an equal number of times during the year on the packaging of each brand style, it must provide a statement of its sales volume, (i.e., the number of cigarettes sold) by brand style, for the previous fiscal year, as well as its anticipated sales for the one year period to be covered by the company's plan, showing that its sales are small enough to qualify for this alternative.<sup>4</sup> The plan should explain how the company will ensure that all four warnings will be

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<sup>2</sup>Under 18 U.S.C. § 1001, knowingly and willfully making false statements to a federal government agency is a crime punishable by a fine and/or imprisonment.

<sup>3</sup>See Tariff Suspension and Trade Act of 2000, Pub. L. No. 106-476.

<sup>4</sup>A company that is just starting to import and sell cigarettes will be unable to provide sales figures, but should state when it plans to begin importing and its anticipated sales volume.

equally displayed on the packs and cartons of each brand style throughout the year.

C.) Records of Compliance: All companies should maintain sufficient records to demonstrate compliance with the plan filed, and the plan should indicate that the company will do so.

## II. Advertising

The company should indicate in its plan whether or not it intends to advertise the cigarettes it manufactures or imports.

A.) Warning Label Size and Placement: If the company advertises, it must explain in its plan how it will comply with the format requirements of the Cigarette Act and must include an example of each of the advertising “warning statement formats” it intends to use.

The standards that the Federal Trade Commission uses to enforce the warning size requirements of the Cigarette Act are not given in terms of inches or meters. Under consents with six major cigarette companies in 1981, formats and sizes of the warnings required for advertisements of various dimensions were specified in acetate exhibits (plastic overlays).<sup>5</sup> The Cigarette Act requires that warnings in advertisements, other than outdoor billboard ads, be 50% larger than those required as of its date of enactment in 1984. The Cigarette Act also includes size requirements for outdoor billboards that are related to the requirements in place as of the date of enactment.

A company advertising cigarettes may develop its own warning statement formats based on these requirements or it may use the formats represented by acetates that were developed by the major cigarette companies and that meet the statutory requirements. These acetates are referred to as Exhibits 1 through 14 in the attached Schedule For Warnings in Advertisements. When you have determined the size of your advertisement, you can refer to the Schedule to determine which acetate you need to place on it. For example, if your advertisement is 60 square inches, you are in category 1, and you need to use the acetate specified in Exhibit 1 or 1(a). Until recently copies of acetates for non-billboard advertisements (Exhibits 1 -11) could be obtained from a private company – but that company is no longer in business. FTC staff is currently developing electronic versions of these templates which will be placed on the FTC’s web site. Copies of acetates for warnings in billboards (Exhibits 12-14) can be obtained by contacting Lou Nazaro, Unimac Graphics, 350 Michelle Place, Carlstadt, NJ 07072, (201) 372-1000.

B.) Warning Label Rotation: If the company advertises its cigarettes, it must rotate the warnings quarterly in advertising, and must provide the Federal Trade Commission with a rotation schedule for the warnings on each brand’s advertising. See the Sample Schedule for Quarterly Rotation, attached below.

C.) Foreign Language Disclosures: If all or part of an advertisement is in a language other

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<sup>5</sup>United States v. Liggett Group, U.S. District Court, S.D.N.Y., Dec. 17, 1981, Consent Judgement 76 Civ. 811 (JMC).

than English or if the ad is carried in a foreign language publication, a foreign language warning may be required. Acetates are available for Spanish language warnings; you can refer to attachment A to determine which acetate (referred to as Exhibits 15 through 28) is required. Warnings in other foreign languages should be submitted to the Federal Trade Commission for approval.

If additional information is required, please contact Sallie Schools at (202) 326-3344 or Michael Ostheimer at (202) 326-2699.

## SAMPLE

### SCHEDULE FOR QUARTERLY ROTATION

	<u>Brand W</u>	<u>Brand X</u>	<u>Brand Y</u>	<u>Brand Z</u>
1 <sup>st</sup> Quarter (Jan. - Mar.)	A	B	C	D
2 <sup>nd</sup> Quarter (Apr. - June)	B	C	D	A
3 <sup>rd</sup> Quarter (July - Sept.)	C	D	A	B
4 <sup>th</sup> Quarter (Oct. - Dec.)	D	A	B	C

The warnings are as follows:

- A. SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
- B. SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
- C. SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.
- D. SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

## SCHEDULE FOR WARNINGS IN ADVERTISEMENTS

Size of Advertisement		Warning Statement
ENGLISH WARNING STATEMENT		
Category 1.	0 to 65 square inches	Exhibit 1 or 1(a)
Category 2.	Over 65 to 110 square inches	Exhibit 2 or 2(a)
Category 3.	Over 110 to 180 square inches	Exhibit 3
Category 4.	Over 180 to 360 square inches	Exhibit 4
Category 5.	Over 360 to 470 square inches	Exhibit 5
Category 6.	Over 470 to 720 square inches	Exhibit 6
Category 7.	Over 5 to 10 square feet	Exhibit 7
Category 8.	Over 10 to 20 square feet	Exhibit 8
Category 9.	Over 20 to 40 square feet	Exhibit 9
Category 10.	Over 40 to 80 square feet	Exhibit 10
Category 11.	Over 80 to 160 square feet	Exhibit 11
Category 12.	Over 160 to 350 square feet	Exhibit 12
Category 13.	Over 350 to 1,200 square feet	Exhibit 13
Category 14.	Over 1,200 square feet	Exhibit 14

### SPANISH WARNING STATEMENT

Category 1.	0 to 65 square inches	Exhibit 15 or 15(a)
Category 2.	Over 65 to 110 square inches	Exhibit 16 or 16(a)
Category 3.	Over 110 to 180 square inches	Exhibit 17
Category 4.	Over 180 to 360 square inches	Exhibit 18
Category 5.	Over 360 to 470 square inches	Exhibit 19
Category 6.	Over 470 to 720 square inches	Exhibit 20
Category 7.	Over 5 to 10 square feet	Exhibit 21
Category 8.	Over 10 to 20 square feet	Exhibit 22
Category 9.	Over 20 to 40 square feet	Exhibit 23
Category 10.	Over 40 to 80 square feet	Exhibit 24
Category 11.	Over 80 to 160 square feet	Exhibit 25
Category 12.	Over 160 to 350 square feet	Exhibit 26
Category 13.	Over 350 to 1,200 square feet	Exhibit 27
Category 14.	Over 1,200 square feet	Exhibit 28

NOTES: All warning statements to be black on white. Exhibits 12, 13, 14, 26, 27 and 28 to be centered horizontally at bottom of advertisement, with at least 3" of white space at each end.